



## CITY OF EVERETT

Community, Planning, & Economic Development Department  
Planning Division

### STAFF REPORT TO THE HEARING EXAMINER

PROJECT #	REVIII 21-005, REVIII 21-008, REVI 21-064
APPLICANT	Port of Everett c/o Laura Gurley 1205 Craftsman Way STE 200, Everett WA 98201
PROJECT NAME	Marine Industrial Expansion at Norton Terminal
LOCATION	2600 Federal Avenue
REPORT DATE	August 20, 2021
ATTACHMENTS	Exhibits 1-16
HEARING DATE	September 2, 2021
STAFF REPORT DATE	August 23, 2021
STAFF CONTACT	Steve Ingalsbe 425.257.7135
LAND USE	Vacant
SHORELINE DESIGNATION	Urban Deep Water Port
ZONING	HI, Heavy Industrial
ZONING OVERLAYS	Naval Station Compatibility Area Industrial Waterfront Height Increase Area
COMPREHENSIVE PLAN	Industrial
FLOODPLAIN	Coastal Floodplain AE Zone
PUBLIC NOTICE	Notice of Application and Hearing date: July 26, 2021 (Exhibit 2) Affidavit of posting date: July 26, 2021 (Exhibit 3) Published Hearing date: July 26, 2021 (Exhibit 4)
SEPA	MDNS issued by the Port of Everett as lead agency on March 8, 2021 (Exhibit 5).
REVIEW PROCEDURE	Everett Municipal Code 15.02.040 provides for projects that have one or more applications be processed concurrently at the higher review level which is a Review Process III.
REQUIRED APPROVALS	Shoreline Substantial Development Permit, Height and Landscape Modifications
PROJECT DESCRIPTION	The proposed project is the development of the former Kimberly Clark site into a secure marine cargo terminal on approximately 34 acres. The proposed project as described in the application includes:



2930 Wetmore Ave, Ste 8-A  
Everett, WA 98201



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EXHIBIT # 1  
PAGE 1 OF 15

	<ol style="list-style-type: none"> <li>1. Guard/Security shacks. Two buildings totaling about 720 square feet.</li> <li>2. Washpad - An approximately 60-ft wide by 120-ft long concrete pad will be constructed for the purpose of washing cargo items and Port equipment. The washpad will be constructed to include a stormwater diversion system.</li> <li>3. Longshoreman Facility – Two portable, one-story trailers totaling about 760 square feet to serve as a Longshoreman restroom, shower, lunchroom, and office facility.</li> <li>4. Lighting—Lighting will be provided by LED light clusters mounted on high mast poles set on concrete protective foundations. The main terminal lighting system will generally be arranged in three rows of poles running north to south with one or two strategically located lighting transformers to feed the lighting system. The majority of the light poles will be up to 75 feet tall and spaced approximately 300 feet apart. The north and south gate areas will be illuminated by shorter 30-foot tall light poles.</li> <li>5. Cargo Container Containment Area - An approximately 41-foot wide by 141-foot long asphalt pad will be constructed for a cargo container containment area. The containment area will be surrounded on three sides by a curb with and/or topographic grade break along one side to allow reach stacker ingress and egress.</li> <li>6. Security—The Norton Terminal will be a Federally secure restricted area and access will be controlled with security fencing and gates that meet US Department of Homeland Security standards. Included will be approximately ten 30-foot tall poles for mounting security cameras.</li> <li>7. Federal Avenue Waterline – Replacement of the 6-inch waterline with a 12-inch diameter waterline.</li> <li>8. Cargo Gateway – Federal Avenue improvements including fencing to provide secure access to the site from the terminal to the south.</li> <li>9. Relocation of overhead power poles and buried communications conduit.</li> </ol>
<b>BACKGROUND</b>	<p>The site is undergoing cleanup of the former Kimberly-Clark paper product industrial site. The site is now vacant except for the remaining 131,820 square foot warehouse and Snohomish PUD substation. The PUD substation will remain until the new substation is built at the northeast corner of the site. The existing dilapidated wharf and dock will remain but no work is proposed on these facilities at this time. The Port is currently undergoing a Model Toxic Control Act (MTCA) 3rd Interim Action for the site. This includes importing approximately 7,000 cubic yards of fill, eliminating and replacing outfalls, and the construction of a low-permeability cap to reduce surface water infiltration. Table 1 in Exhibit 7 outlines those elements of the work inside and outside of the MTCA scope of work and Table 2 in Exhibit 7a outlines the area calculations of work elements within shoreline and outside of the MTCA scope of work. Work under MTCA does not require a shoreline permit and is not included as part of the proposed development that requires a height and landscape modification approvals and a shoreline permit.</p>



<p><b>SHORELINE MASTER PROGRAM</b></p>	<p>No substantial development shall be undertaken on the shorelines of Everett without first obtaining a shoreline permit from the City. The site is within 200 feet of the East Waterway of Port Gardner Bay. Substantial development generally includes development which exceeds a total cost of fair market value of \$7,047. Listed below are the elements and their requirements from the City of Everett Shoreline Master Program applicable to this project.</p>
<p><b>SHORELINE MASTER PROGRAM ELEMENTS CHAPTER 3</b></p>	<p><u>Shoreline Use Element</u></p> <p>Regulation #1. <i>Exterior lighting, including lighting of signs, shall be directed downward onto the site and away from other shoreline properties or nearby neighborhoods.</i></p> <p>Regulation #2. <i>All shoreline development and activities shall comply with the City's noise regulations, both during and after construction. The City may require the applicant to prepare noise studies to determine if a proposal is in conformance with the regulations.</i></p> <p>Staff response: The proposed development includes lighting and activity that may generate noise generated when moving cargo containers and equipment. The lights will be mounted on poles up to 75 feet tall spaced approximately 300 feet apart. Lighting is addressed in greater detail below in this report. The Mitigated Determination of Non-Significance in Exhibit 5 issued by the Port of Everett lists several mitigation measures to limit noise during the construction and operation of the facility.</p> <p><u>Flood Hazard Reduction Element</u></p> <p>Regulation #2. <i>All development in the Flood Fringe and Floodway overlay zones shall comply with EMC 19.30, as applicable. In addition, all development located downriver from SR 529, shall be floodproofed in accordance with the provisions in EMC 19.30.040C, as applicable.</i></p> <p>Staff response: Applicable Chapter 30 regulations are addressed in greater detail below in this report.</p> <p><u>Public Access Element</u></p> <ol style="list-style-type: none"> <li>1. Regulation #1. <i>Public access shall be required in the review of all shoreline substantial development and conditional use permits...</i></li> <li>2. Regulation #2. <i>Projects which meet the following criteria, as determined by the Planning Director or Hearing Examiner, are not required to provide on-site public access but must provide either off-site public access of comparable value or pay an in lieu fee to a fund established by the City:</i> <ol style="list-style-type: none"> <li>a. <i>The project is in the Urban Deep Water Port designation.</i></li> <li>f. <i>If the applicant opts to pay an in lieu fee, that fee will be 2% of the project's total construction costs. The in lieu fee for publicly bid projects awarded through a competitive public process will be based on the project's engineer's</i></li> </ol> </li> </ol>

*estimate.... The in lieu fees will be calculated without consideration of applicable sales tax.*

Staff response: No public access is proposed along the shoreline and is not required as the site is designated Urban Deep Water Port. A public access fee of 2% is required or the applicant may directly apply the equivalent funds to public access related projects as mutually agreed to in writing with the city. This fee is based on the construction costs for that portion of the project within 200 feet of the shoreline jurisdiction.

#### Conservation Element

*Regulation 1. Except for the reasonable use exception, proposed shoreline activities and modifications within shoreline jurisdiction shall comply with Everett's Critical Areas regulations and other local, state and federal regulations relating to critical areas, as applicable.*

Staff response: Everett's Critical Area applicable regulations in EMC 19.37 are addressed below in greater detail.

*Regulation 4. All developments shall mitigate impacts to water quality using best available science. Compliance with City stormwater regulations consistent with state stormwater regulations shall be required. Water quality monitoring during construction and operation may be required by the Planning Director or Hearing Examiner on a project-by-project analysis based upon specific characteristics of the proposal.*

Staff response: Site stormwater runoff will be treated prior to discharge to the East Waterway and is detailed further in the environmental checklist in Exhibit 6. All Port operations and construction will comply with the Clean Water Act, Ecology, and City of Everett wastewater and stormwater regulations to minimize the potential for wastewater to enter ground or surface waters. Construction of the stormwater collection, conveyance, and treatment system is part of the MTCA 3<sup>rd</sup> Interim Action.

*Regulation 8. As existing shoreline properties are redeveloped, impervious surfaces not needed for current or planned uses shall be removed and shoreline buffers shall be enhanced and/or restored to the buffer width required by the SMP, except as necessary to accommodate access to the water necessary for the operation of water dependent and water related uses and/or public access. The Planning Director and Hearing Examiner shall have the authority to require redesign of the site and structures to minimize impacts to existing aquatic and buffer vegetation and to provide for buffer enhancement.*



	<p>Regulation 11. <i>Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with state and federal requirements.</i></p> <p>Staff response: No buffer is proposed. The site has contaminated soils that requires an impermeable cap to the edge of the shoreline as part of a MTCA cleanup action.</p>
<p><b>SHORELINE USES</b></p> <p><b>CHAPTER 5</b></p>	<p><u>Industry</u></p> <p>Industry is listed as a permitted use in the Urban Deep Water Port shoreline designation in Table 1, Shoreline Use. The following regulations are applicable to this project.</p> <p>Regulation #1. <i>The Shoreline Management Act establishes a priority of shoreline uses with the highest priority given to environmental restoration, water dependent and water related uses.</i></p> <p>Staff response: The proposed shipping cargo terminal handling, loading/unloading area is a water dependent use. Water dependent uses are defined in the Shoreline Master Program as follows: <i>"Water dependent use means a use or portion of a use which cannot exist in a location that is not adjacent to the water but is dependent on the water by reason of the intrinsic nature of its operations. Examples of water dependent uses include ship cargo terminal loading areas, fishing, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, hydroelectric dams, irrigation facilities, and sewer outfalls."</i></p> <p>Regulation #3 <i>Cooperative use of docking, parking, cargo handling, and storage areas shall be given consideration in future shoreline industrial and Port development. Proposed developments shall maximize the use of legally established existing industrial facilities and avoid duplication of pier and dock facilities before expanding into undeveloped areas or building new facilities. Proposals for new industrial developments shall demonstrate the need for expansion into an undeveloped area.</i></p> <p>Staff Response: No new docks are proposed. The existing terminal's docks to the south will be used.</p> <p>Regulation #6 <i>In all new and expanded port and/or industrial developments, the best available management practices and procedures shall be employed for safe handling of fuels and toxic or hazardous materials.</i></p> <p>Regulation #7 <i>Ports and industry shall employ best management practices concerning the various services and activities they perform and their impacts on</i></p>

	<p><i>the surrounding water quality. Operators shall take all actions necessary to ensure that contaminants do not enter the water or storm drainage system. Development and operations shall comply with the City's Drainage Ordinance and Stormwater Management Manual.</i></p> <p>Staff Response: These regulations will be recommended as a condition.</p>
<p><b>UNIFIED DEVELOPMENT CODE TITLE 19</b></p>	<p>The following code standards apply to this development.</p> <p><u>19.05 Uses</u></p> <p><i>A marine terminal is a permitted use in the HI zone. Marine Terminal is defined as follows: "Marine terminal" means a water-dependent transportation facility furnishing services incidental to barge, marine shipping and other marine vessels.</i></p> <p><u>19.06 Setbacks</u></p> <p><i>A 10-foot setback for buildings is required from the rear lot line. The front lot line is along Federal Avenue thus the rear lot line is the north lot line.</i></p> <p><u>19.12 Building Form and Design Standards</u></p> <p>The following additional applicable standards apply:</p> <p><i>B. Site Design.</i></p> <ol style="list-style-type: none"> <li><i>1. Buildings, walls, and landscaping should be arranged to screen less visually aesthetic components necessary for industrial development, including loading and service bays, outdoor bulk storage areas, trash enclosures, mechanical equipment, and noise and odor producing facilities. Service areas and bulk storage should be screened from view of public right-of-way and screened with compatible architectural features and walls, and/or dense landscaping.</i></li> <li><i>2. Trash enclosures should not be visually prominent from the public view of the site.</i></li> </ol> <p>Staff response: There will be no loading and service bays or mechanical equipment associated with the proposed buildings. Trash closures should not be visible as the buildings will be several hundred feet from public streets.</p> <p><i>C. Performance Standards. All permitted uses must address the generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight or other undesirable impacts during the review process for establishing, expanding or modifying the use. The city shall have the authority to impose conditions necessary to ensure mitigation of potential nuisance impacts, including redesign of the project, when located in proximity to residential uses.</i></p>



Staff Response: The SEPA checklist in Exhibit 6 addresses generation of noise, glare, and aesthetic impacts. The proposal will comply with the City's noise ordinance.

*D. Lighting and Glare in Central Waterfront Planning Area. Development within the Central Waterfront Planning Area (see Map 12-2) is required to meet the site lighting standards in this subsection.*

*1. Intent. The intent of this provision is to encourage the use of lighting as an integral design component to enhance buildings, landscaping, or other site features; increase night sky visibility and to reduce the general illumination of the sky; reduce horizontal light glare and vertical light trespass from a development onto adjacent parcels and natural features; and use lighting in conjunction with other security methods to increase site safety.*

*2. Standards.*

*a. All site lighting shall meet dark-sky standards.*

*...*

*c. Lighting shall be provided at consistent levels, with gradual transitions between maximum and minimum levels of lighting and between lit areas and unlit areas. Highly contrasting pools of light and dark areas shall be avoided.*

*d. Parking area lighting fixtures shall be full cut-off (zero percent candlepower at ninety degrees horizontal and ten percent maximum candlepower at eighty degrees from vertical), dark-sky rated, and mounted no more than thirty feet above the ground, with lower fixtures preferable so as to maintain a human scale.*

*...*

*g. Lighting must not trespass onto adjacent private parcels, nor shall a light source (luminaire) be visible at the property line. All building lights shall be directed onto the building itself and/or the ground immediately adjacent to it. The light emissions shall not be visible above the roofline of the building.*

*h. Building wall mounted parking lot lighting is prohibited.*

*3. A lighting plan demonstrating compliance with these standards shall be submitted for review and approval at time of submittal for any permit that includes site lighting.*

Staff response: The applicant has submitted a lighting analysis (Exhibit 16) that meets the above standards. The 30-foot light fixture height limit applies only to parking areas. The lights only trespass onto neighboring railroad and public rights-of-way and private parcels that are owned by the Port and not into residential areas. The applicant has received a federal grant with the requirement to "Buy American" which requires that all components of the project must be manufactured in the USA. With the limited number of manufacturers that are able to meet both Buy American and Dark Sky standards, the applicant requests the flexibility to allow for a manufacturer to demonstrate that their products meet the equivalent of Dark Sky standards, although they may not be certified Dark Sky. This is acceptable to staff.

19.17.120 Compatibility with Naval Station Everett.

The project site is about 350 feet from the Naval Station and is within the naval compatibility area. Development within this area is subject to the following applicable requirements in EMC 19.17.120.C:

*4. Required Coordination. Any development that is on a lot within two hundred feet of Naval Station Everett or has frontage on the shoreline shall coordinate with Naval Station Everett on security and public safety issues. A comprehensive security and public safety plan must be submitted to the city at time of land use permit review. Naval Station Everett shall be provided at least fifteen days to review and comment on the plan. The planning director is authorized to establish conditions that address potential security impacts upon Naval Station Everett.*

Staff response: A comprehensive security and public safety plan has not been submitted to the city but the Port of Everett is working with the Naval Station on developing a plan acceptable to the Navy similar to those protocols already in place for neighboring Port's seaport properties and operations.

*5. Electromagnetic Radiation. Any business within one-fourth mile (one thousand three hundred twenty feet) of Naval Station Everett that generates electromagnetic radiation (EMR) shall coordinate with Naval Station Everett. An EMR frequency spectrum plan must be submitted to the city at time of land use permit review. Naval Station Everett shall be provided at least fifteen days to review and comment on the plan. The planning director is authorized to establish conditions that address potential EMR impacts to Naval Station Everett.*

Staff response: No generation of EMR is proposed.

*6. Marine Traffic. Any development that generates marine traffic in the Everett Harbor must coordinate with Naval Station Everett. A port operations plan must be submitted to the city at time of land use permit review. Naval Station Everett shall be provided at least fifteen days to review and comment on the plan. The planning director is authorized to establish conditions that address potential impacts from marine traffic on Naval Station Everett.*

Staff response: A new port operations plan has not been submitted to the city but the Port of Everett is working with the Naval Station on developing a plan acceptable to the Navy similar to those protocols already in place for neighboring Port's seaport properties and operations.

19.22 Building and Structure Heights

Height of buildings is limited to maximum height of 5 floors. EMC 19.22.060.E.1 calculates a first floor at 15 feet and upper floors at 10 feet in industrial zones. A maximum height of 55 feet applies to the project site. EMC 19.22.070.A allows an exception for heights of properties in industrial zones waterward of the BNSF rail



tracks with access to the marine shorelines. An additional two floors (20 feet) may be approved through a Review Process III after review of a viewshed analysis that demonstrates the following:

- 1. The increased height is necessary to support water dependent industrial activities on the property;*
- 2. The increased height will not obstruct the view of a substantial number of residences for those areas adjoining the shoreline; and*
- 3. The increased height will not cause adverse impact on views from adjoining public parks or public open spaces.*

The Port of Everett has requested a 20-foot height modification, REV III 21-008, to allow a maximum height of 75 feet for up to 14 light poles. A viewshed analysis in Exhibit 14 has been submitted. The above criteria were addressed by the Port of Everett as follows:

- 1. The increased height is necessary to support water-dependent industrial activities on the property.*

Port of Everett response: "The proposed use as a cargo terminal is a "water-dependent use," as defined in the City of Everett's Shoreline Master Program, which references ship cargo terminal loading areas. The proposed high-mast light poles are required to support operations, meet security requirements, and provide required illumination at the cargo terminal, specifically the taller pole height provides for greater extent of illumination from each pole, which minimizes the number of light poles that would otherwise conflict with cargo storage/movement on the Site."

Staff response: The light analysis in Exhibit 16 states that the industrial standard lighting level for cargo terminals is 5-foot candle and that the 75-foot tall light poles are necessary to achieve those lighting levels throughout the site.

- 2. The increased height will not obstruct the view of a substantial number of residences for those areas adjoining the shoreline.*

Port of Everett response: "Permanent placement of the high-mast light poles may interfere with, but not obstruct, a small percentage of the broad expanse of water, mountain, island, and peninsula views from public streets, sidewalks, and nearby residential areas located to the east of the Site. These views include Port Gardner Bay; Possession Sound and adjacent waters; Whidbey, Jetty, Hat, and Camano Islands; the Olympic Peninsula and Olympic Mountains; Naval Station Everett; and the Tulalip Reservation. However, the proposed light poles will be thin (i.e., base diameter of 17 inches tapering to a diameter of approximately 7 inches at the top with mast head light array extending radially from the top of the high-mast pole; refer to Attachment 1), singular poles that will maintain most of the existing views of these very small portions of the total view areas. The Site sits on average approximately 15 ft below West Marine View Drive. Elevations increase further to the east allowing for views across the Site to the US Navy base

and beyond. Photographs are provided in Attachment 2 that show views from the terminus of 24th Street (see Attachment 2, Figure 2-1) showing views of:

- When the K-C mill was in operation (see Attachment 2, Figure 2-2);
- Current conditions (i.e., following completion of the 2nd Interim Action; see Attachment 2, Figure 2-3); and
- A rendering with the proposed high-mast light poles (see Attachment 2, Figure 2-4)

The former K-C Site substantially obstructed shoreline views, and the Project will maintain views of the shoreline similar to that of the current conditions. The existing viewshed includes other standard height poles (e.g., streetlights on West Marine View Drive and overhead utilities along the railroad tracks) that are much closer to the east side of the Site. Further to the west and within the existing viewshed are several tall utility poles, including high-mast light poles throughout the US Navy base, some of which appear to be of similar height as those proposed by the Port, and numerous Snohomish County PUD power poles both along the shoreline and closer to Lower Norton that are 80 ft tall.”

Staff response: The residences’ views to the west should not be obstructed by the light fixtures as demonstrated in the view analysis submitted by the Port of Everett.

*3. The increased height will not cause adverse impact on views from adjoining public parks or public open spaces.*

No parks or public open spaces directly adjoin the Site. The Bayside Park and Bayside P-Patch are located at the corner of 23rd Street and Marine View Drive, northeast of the Site, and are separated from the Site by BNSF Railway rail right-of-way and West Marine View Drive (see Attachment 2, Figure 2-1). Nonetheless, views from the park and P-patch will not be adversely affected by the proposed high-mast light poles. Views would be similar to those experienced by the residences discussed above and would be improved from the previous condition when the K-C mill was in operation.

Staff Response: No views from Bayside park will be adversely impacted as described by the Port of Everett’s response.

19.30 Flood Damage Prevention

A portion of the site near the cove west of the warehouse is located within the flood hazard area according to FEMA’s Flood Insurance Rate Map. Exhibit 11 shows that the rest of the site is or will be elevated out of the floodplain as part of the cleanup action.



#### 19.34 Parking, Loading, an Access Requirements

Table 34-1 of EMC 19.34.020 requires that two paved, off-street parking spaces be provided for the proposed buildings. Four parking spaces are proposed next to the longshoreman trailers.

#### 19.35 Landscaping

Landscape Category C applies in the HI zone. Category C requires a 15-foot wide landscape strip along street frontages and a five-foot wide landscape strip along interior lot lines. The landscape strip requires Type III landscaping which is ornamental and is intended to provide a visual separation of uses from streets and adjoining properties.

The Port of Everett has requested a landscape modification, REV I 21-064, to deviate from the above standards. EMC 19.35.190.A allows the planning director to authorize a reduced width of planting or waive some or all of the landscaping requirements through a Review Process I. Below are the Port of Everett's responses in Exhibit 8 to the following instances listed in EMC 19.35.190.A where landscaping standards can be reduced or waived:

*1. When existing conditions on or adjacent to the site, including, but not limited to, differences in elevation, existing vegetation, or location of buildings or utilities would render the requirements of this section ineffective.*

Port of Everett Request: "The majority of the site sits below the adjacent properties to the east. The elevation difference varies from 10 feet on the north end, increasing to approximately 30 feet near the 26th Street end, to 20 feet near the south end. West Marine View Drive further separates the site from adjacent parcels to the east as well. Landscaping on the site would not act as a screen or visual enhancement to these adjacent properties and therefore should be waived. The north site boundary abuts the City-owned utility facility. Landscape planting along this boundary, between two industrial sites (both zoned Heavy Industrial) that only limited personnel will be at, will serve no meaningful screening purpose. The adjacent street frontage on lower Norton is limited. Most of the frontage on the west side of the street is where the future PUD substation will be located. The Port is requesting that the City and PUD address that frontage when the PUD substation is underway. Additionally, there is limited public, vehicular traffic and no pedestrian traffic on lower Norton because it serves limited properties and access southbound has been blocked for a number of years at the railroad crossing. However, the Port will include a small landscaping area at the north entrance adjacent to the Lower Norton right-of-way. The Federal Ave. street frontage is also extremely limited. This will be the Port's main cargo connection route between the existing terminal and the proposed terminal. Improvements include the addition of a guard shack on the west side of Federal Ave. and security gates at the entrance to the property, which are needed due to Homeland Security requirements. These eliminate an opportunity for frontage landscaping at that location. On the east side of Federal Ave. is the existing warehouse and the frontage adjacent to it. We request that landscaping

requirement for that area be addressed when the warehouse is redeveloped. See request under #4 below for more detail on the warehouse.”

Staff response: The existing trees along Lower Norton do provide some separation from the street and is recommended that the trees remain wherever possible. Exhibit 8a shows that the applicant proposes to retain one tree and some shrubs but the majority of the trees require removal as most of the area will be capped. The planning director supports the request for the elimination of the five-foot wide landscape strip along the north lot line as it is adjacent to a water treatment facility. Required landscaping in the area between the proposed substation and street will be determined at time of the application for the proposed substation.

*4. When development will occur in phases and development of subsequent phases will result in removal of landscaping required by this title.*

Port of Everett Request: “At the south end of the site, these areas and the adjacent properties are all owned by the Port, and future port tenant uses may cross parcel boundaries, the landscaping would impede those future uses and not be serving any purpose. The former Kimberly Clark warehouse building will be redeveloped in the future. At this time several options are under consideration pending direction from the Port Commission, including but not limited to building improvements to prepare for Port use or tenant use, partnerships in redevelopment with third parties, and partial or complete building demolition. Until such time as the direction of the warehouse’s future is determined, the Port is requesting a waiver of all landscaping requirements adjacent to the warehouse, the east side of Federal Ave., and the parking lot on the south side of the building. The eastern boundary abuts the BNSF railroad mainline. Future phases of work include adding rail spurs directly from the mainline into the site. Any landscaping installed in that area would be removed. Coupled with the request under #5 below, specifically related to the railroad, the Port is requesting a waiver from landscaping requirements for this area. The southern site boundary, between Federal and the water, separates two Port-owned parcels. Currently, the Port leases the area south of the site to Dunlap Towing. Future leasehold changes may change that boundary and would result in removal of any landscaping that is installed. As both properties are Port-owned and zoned Heavy Industrial, landscape planting along that boundary would not be visible to the general public, and not serve a meaningful screening purpose. The Port is requesting a waiver from landscaping requirements for this area. Additionally, the Final MTCA Cleanup Action has not yet been determined. While it is unknown at this time, it is anticipated that the Department of Ecology may require removal of some or all landscaping on site in order to require installation of a low permeability cap to reduce stormwater infiltration and potential impacts of residual contamination to groundwater. Therefore, the Port is requesting a waiver of all landscaping for the entire site except for a small entry area at the north end adjacent to Lower Norton.”



Staff response: As described by the Port of Everett, additional work will continue in future phases that may result in removal of newly installed landscaping at the south end of the site. The planning director supports this request provided that any future development of the south portion of the site not included in this proposal comply with EMC 19.35.

*5. When the subject property abuts railroad right-of-way developed with rail facilities, the planning director may modify the landscaping requirements for that portion of the property abutting the railroad right-of-way, if such modification will not reduce the compatibility between the subject property and other properties in the vicinity.*

Port of Everett Request: "The east side of the site completely abuts the BNSF railroad mainline. Elimination of landscaping in this area will not reduce the compatibility between the site and the adjacent properties in the vicinity. In this area, the adjacent properties are all on the opposite side of the tracks, and sit at elevations well above the site, effectively separating the site from these properties. Therefore, the Port is requesting a waiver from landscaping requirements on the entire eastern boundary with the exception of a small triangle at the north entry adjacent to the Lower Norton right-of-way. In closing, as supported by the aforementioned reasons allowed under the Landscape Modification criteria, as well as consideration of the general nature and uniqueness of this project, the Port is requesting that the Planning Director grant a full waiver from landscaping requirements for the proposed project with the exception of a small landscaped area at the north entrance adjacent to the Lower Norton right-of-way as shown on the plans."

Staff response: The property abuts the railroad right-of-way to the east. The planning director supports this request to eliminate the required five-foot wide landscape strip along the railroad as it should not reduce the compatibility between the subject property and other properties in the vicinity as described by the Port.

#### Chapter 37, Critical Areas

The site is adjacent to the East Waterway of Port Gardner Bay which is defined as a critical area feature under EMC19.37.040. The shoreline is ripped and there is minimal amount of vegetation along the shoreline. The vegetation will be removed under the cleanup action. No in-water work is proposed as part of this proposed development. EMC 19.37.190 requires a biological assessment. The Biological Evaluation and Essential Fish Habitat Evaluation report in Exhibit 12 concludes: "The proposed Project "may affect, but is not likely to adversely affect" (NLAA) Coastal-Puget Sound bull trout, Puget Sound Chinook salmon, and Puget Sound steelhead trout. The proposed Project will have "no effect" (NE) on marbled murrelet, Southern Resident killer whale, humpback whale, yelloweye rockfish, and bocaccio rockfish. This BE identifies NLAA determinations on critical habitat for Coastal-Puget Sound bull trout, Puget Sound Chinook salmon, and

	Southern Resident killer whale, and NE determinations on critical habitats for marbled murrelet, yelloweye rockfish, bocaccio rockfish, and Puget Sound steelhead trout. The Project will have no permanent adverse effects on Pacific salmon, groundfish, or coastal pelagic EFH."
<b>PUBLIC COMMENT</b>	The public comment period has not closed. Any comments received after the date of this report will be provided prior to or at the hearing. As of August 23, 2021, one letter has been received and is in Exhibit 15.
<b>RECOMMENDATION</b>	<p>Planning staff tentatively recommends the Hearing Examiner APPROVE the requested Shoreline Substantial Permit, height modification, and landscape modification with the following conditions:</p> <ol style="list-style-type: none"> <li>1. The applicant shall pay a 2% public access fee for that portion of the project within shoreline jurisdiction or directly apply equivalent funds to public access related projects as mutually agreed to in writing with the City of Everett</li> <li>2. Lighting must comply with dark sky standards or the Applicant must provide the City with a written statement from the lighting manufacturer demonstrating that it can meet the same criteria.</li> <li>3. Storage that is not Port cargo-related is prohibited within 200 feet of the shoreline.</li> <li>4. The best available management practices and procedures shall be employed for safe handling of fuels and toxic or hazardous materials. Operators shall take all actions necessary to ensure that contaminants do not enter the water or storm drainage system.</li> </ol>
<b>EXHIBITS</b>	<ol style="list-style-type: none"> <li>1. Staff report</li> <li>2. Notice of Application and Hearing</li> <li>3. Affidavit of Posting</li> <li>4. Published Hearing</li> <li>5. MDNS</li> <li>6. Checklist</li> <li>7. List of Elements In and Outside of the MTCA IA Scope of Work <ol style="list-style-type: none"> <li>a. Area Calculations of Work Elements with Shoreline and Outside MTCA Scope of Work</li> <li>b. Map</li> </ol> </li> <li>8. Landscape Modification Request <ol style="list-style-type: none"> <li>a. Map</li> </ol> </li> <li>9. JARPA</li> </ol>



	<ul style="list-style-type: none"><li>10. Land Use Application</li><li>11. FEMA FIRM</li><li>12. 13-foot Base Flood Elevation</li><li>13. Biological Evaluation (includes plan set)</li><li>14. Viewshed Analysis</li><li>15. Public Comment</li><li>16. Lighting Analysis</li></ul>
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